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EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 22nd December, 2008.

I

BILL No. LXXII OF 2008

A Bill further to amend the Insurance Act, 1938, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Insurance Laws (Amendment) Act, 2008.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE INSURANCE ACT, 1938

Substitution of references to certain expressions by certain other expressions.

Amendment of section 2.

2. In the Insurance Act, 1938 (hereafter in this Chapter referred to as the Insurance Act), throughout the Act, for the words and figures "the Indian Companies Act, 1913", wherever they occur, the words and figures "the Companies Act, 1956" shall be substituted. 4 of 1938, 7 of 1913, 1 of 1956.

3. In section 2 of the Insurance Act,—

(i) for clauses (I) and (IA), the following clauses shall be substituted, namely:—

“(I) “actuary” means actuary as defined in clause (a) of sub-section (I) of section 2 of the Actuaries Act, 2006; 35 of 2006.

“(IA) “Authority” means the Insurance Regulatory and Development Authority of India established under sub-section (I) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;” 41 of 1999.

(ii) clause (5A) shall be omitted;

(iii) after clause (6B), the following clause shall be inserted, namely:—

“(6C) “health insurance business” means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient on an indemnity, reimbursement, service, prepaid, hospital or other plans basis including assured benefits, long term care, overseas travel cover and personal accident cover;”;

(iv) for clause (7A), the following clause shall be substituted, namely:—

“(7A) “Indian insurance company” means any insurer, being a company which is limited by shares, and,—

(a) which is formed and registered under the Companies Act, 1956 as a public company or is converted into such a company within one year of the commencement of Insurance Laws (Amendment) Act, 2008; 1 of 1956.

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed forty-nine per cent. paid-up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

Explanation.— For the purposes of this clause, the expression “foreign company” shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd’s established under the Lloyd’s Act, 1871 (United Kingdom);”;

(v) in clause (8A),—

(I) for sub-clause (b), the following sub-clause shall be substituted, namely:—

“(b) having a minimum paid-up capital of rupees one hundred crores in case of life insurance or general insurance business and rupees fifty crores in case of health insurance business;”;

(II) in sub-clause (d), after the words “general insurance business”, the words “or health insurance business” shall be inserted;

(vi) for clause (9), the following clause shall be substituted, namely:—

‘(9) “insurer” means —

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India;’;

(vii) in clause (10), the words and figures “licensed under section 42” shall be omitted;

(viii) in clause (11), in sub-clause (c), for the words “annuities payable out of any fund”, the words “benefit payable out of any fund” shall be substituted;

(ix) clauses (12), (13) and (15) shall be omitted;

(x) in clause (16), for the words, brackets, figures and letter “clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913”, the words, brackets and figures “sub-clauses (iii) and (iv) of sub-section (1) of section 3 of the Companies Act, 1956” shall be substituted;

(xi) after clause (16), the following clauses shall be inserted, namely:—

‘(16A) “regulations” means the regulations framed by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;

(16B) “re-insurance” means the insurance of all or part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium;

(16C) “Securities Appellate Tribunal” means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992;’;

(xii) clause (17) shall be omitted.

4. For section 2C of the Insurance Act, the following section shall be substituted, namely:—

“2C. Save as otherwise provided under this Act, no insurer shall begin to carry on any class of insurance business in India unless it is registered under this Act:

Provided that an insurer, being an Indian insurance company, insurance co-operative society or a body corporate incorporated under the law of any country outside India not being of the nature of a private company carrying on the business of insurance, may carry on any business of insurance in any special economic zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005:

Provided further that a foreign insurer registered under law of any country may be notified by the Authority to carry on the business of re-insurance in India through its branch office as per the terms and conditions specified by the regulation.”.

5. In section 2CA of the Insurance Act,—

(i) in clause (a), for the words, brackets, letters and figures “a body corporate referred to in clause (c) of sub-section (1) of section 2C”, the words “a body corporate incorporated under the law of any country outside India not being a private company” shall be substituted;

(ii) in clause (b), for the words, brackets, letters and figures “a body corporate referred to in clause (c) of sub-section (1) of section 2C”, the words “a body corporate

Substitution of new section for section 2C.

Prohibition of transaction of insurance business by certain persons.

Amendment of section 2CA.

7 of 1913.

1 of 1956.

41 of 1999.

15 of 1992.

28 of 2005.

incorporated under the law of any country outside India not being of the nature of a private company” shall be substituted.

Insertion of
new section
2CB.

Properties in
India not to be
insured with
foreign
insurers except
with the
permission of
Authority.

6. After section 2CA of the Insurance Act, the following section shall be inserted, namely:—

“2CB. (1) No person shall take out or renew any policy of insurance in respect of any property in India, except a property situated in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005, or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Authority.

28 of 2005.

(2) If any person contravenes the provision of sub-section (1), he shall be punishable with penalty which may extend to five crore rupees.”.

Omission of
section 2E.

7. Section 2E of the Insurance Act shall be omitted.

Amendment of
section 3.

8. In section 3 of the Insurance Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Every application for registration shall be made in such manner and shall be accompanied by such documents as may be specified by regulations.”;

(ii) in sub-section (2A), in clause (d), the figures “32” shall be omitted;

(iii) for sub-section (2C), the following sub-section shall be substituted, namely:—

“(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Securities Appellate Tribunal.”;

(iv) sub-section (2D) shall be omitted;

(v) for sub-sections (3), (4), (5) and (5A), the following sub-sections shall be substituted, namely:—

“(3) In the case of any insurer having joint venture with a person having its principal place of business domiciled outside India, the Authority shall withhold registration or cancel registration already made if it is satisfied that in the country in which such person has been debarred by law or practice of that country to carry on insurance business.

(4) The Authority may suspend or cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

(a) if the insurer fails, at any time, to comply with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities, or

(b) if the insurer is in liquidation or is adjudged as an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued thereunder, or

(e) if the Authority has reason to believe that any claim upon the

insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or

(f) if the insurer carries on any business other than insurance business or any prescribed business, or

(g) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(h) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Management Act, 1999 or the Prevention of Money Laundering Act, 2002, or

(i) if the insurer fails to pay the annual fee required under section 3A, or

(j) if the insurer is convicted for an offence under any law for the time being in force, or

(k) if the insurer being a co-operative society set up under the relevant State laws or, as the case may be, the Multi-State Co-operative Societies Act, 2002, contravenes the provisions of law as may be applicable to the insurer.

(5) When the Authority suspends or cancels any registration under clause (a), clause (d), clause (e) or clause (f) of sub-section (4), it shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as it may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority suspends or cancels any registration under clauses (b), (c), (i), (j) or (k) of sub-section (4), the suspension or cancellation, as the case may be, shall take effect on the date on which notice of the order of suspension or cancellation is served on the insurer.”.

(vi) for sub-section (5C), the following sub-section shall be substituted, namely:—

“(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f) or clause (g) of sub-section (4), the Authority may at its discretion revive the registration, if the insurer within six months from the date on which the suspension or cancellation took effect complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.”.

9. For section 3A of the Insurance Act, the following section shall be substituted, namely:—

“3A. (1) An insurer who has been granted a certificate of registration under section 3 shall pay such annual fee to the Authority in such manner as may be specified by the regulations.

Substitution of new section for section 3A.

Payment of annual fee by insurer.

(2) Any failure to deposit the annual fee shall render the certificate of registration liable to be cancelled.”.

Substitution of new section for section 4.

Minimum limits for annuities and other benefits secured by policies of life insurance.

Amendment of section 5.

Substitution of new section for section 6.
Requirement as to capital.

Amendment of section 6A.

10. For section 4 of the Insurance Act, the following section shall be substituted, namely:—

“4. The insurer shall pay or undertake to pay on any policy of life insurance or a group policy issued, a minimum annuity and other benefits as may be determined by regulations excluding any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.”.

11. In section 5 of the Insurance Act,—

(i) in sub-section (2), both the provisos shall be omitted;

(ii) sub-section (3) shall be omitted.

12. For section 6 of the Insurance Act, the following section shall be substituted, namely:—

“6. (1) No insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,— 41 of 1999.

(i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees fifty crore, in case of a person carrying on exclusively the business of health insurance; or

(iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer.

(2) No insurer, as defined in sub-clause (d) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore.”.

13. In section 6A of the Insurance Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, unless it satisfies the following conditions, namely:—

(i) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by regulations;

(ii) that the voting rights of shareholders are restricted to equity shares;

(iii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new;

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement.”; 47 of 1950.

(ii) in sub-section (2), after the words "paid-up amount of the", the word "equity" shall be inserted;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) A public company as aforesaid which carries on life insurance business, general and health insurance business and re-insurance business—

1 of 1956.

(a) shall, in addition to the register of members maintained under the Companies Act, 1956, maintain a register of shares in which the name, occupation and address of the beneficial owner of each share shall be entered including any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

(b) shall not register any transfer of its shares—

1 of 1956.

(i) unless, in addition to compliance being made with the provisions of section 108 of the Companies Act, 1956, the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each;

(ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital unless the previous approval of the Authority has been obtained to the transfer;

(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

12 of 2003.

Explanation.—For the purposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively assigned to them in the Competition Act, 2002."

(iv) sub-sections (6), (7), (8), (9) and (10) shall be omitted;

(v) in sub-section (11), the words, brackets and figures "except those of sub-sections (7), (8) and (9)" shall be omitted;

(vi) in sub-section (11), clause (ii) shall be omitted; and

(vii) in the *Explanation*, in sub-clause (c) of clause (ii), the words "managing agent" shall be omitted.

14. Section 6AA of the Insurance Act shall be omitted.

Omission of section 6AA.

15. In section 6B of the Insurance Act,—

Amendment of section 6B.

(i) in sub-section (1),—

(a) for the words "life insurance business", the words "life or general or health insurance or re-insurance business" shall be substituted; and

(b) for the words "Central Government", the word "Authority" shall be substituted;

(ii) sub-section (4) shall be omitted.

Omission of sections 6C, 7, 8 and 9.

16. Sections 6C, 7, 8 and 9 of the Insurance Act, shall be omitted.

Amendment of section 10.

17. In section 10 of the Insurance Act,—

(i) in sub-section (1), for the words “prescribed in this behalf”, the words “specified by the regulations” shall be substituted;

(ii) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2AA) Where the insurer carries on the business of general insurance, all receipts due in respect of each sub-clause of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the Authority the necessary details of such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly save as expressly permitted under this Act or regulations made thereunder.”.

Substitution of new section for section 11.

18. For section 11 of the Insurance Act, the following section shall be substituted, namely:—

“11. (1) Every insurer, on or after the commencement of the Insurance Laws (Amendment) Act, 2008, in respect of insurance business transacted by him and in respect of his shareholders’ funds, shall, at the expiration of each financial year, prepare with reference to that year, balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations as may be specified.

(2) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.

(3) Unless the insurer is a company as defined in clause (10) of section 2 of the Companies Act, 1956, the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in case of an insurance co-operative society by the person in-charge of the society and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.”.

Substitution of new section for section 12.

19. For section 12 of the Insurance Act, the following section shall be substituted, namely:—

“12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall, unless they are subject to audit under the Companies Act, 1956, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 233 of the Companies Act, 1956.”.

Audit.

Amendment of section 13.

20. In section 13 of the Insurance Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every insurer carrying on life insurance business shall, once at least every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation

of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations:

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided further that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations.”;

(ii) sub-section (3) shall be omitted;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) There shall be appended to every such abstract a statement prepared in such form and in such manner as may be specified by the regulations:

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.”;

(iv) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class “Miscellaneous Insurance” and the Authority may authorise such modifications and variations of regulations as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.”.

21. For section 14 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 14.

“14. Every insurer, in respect of all business transacted by him, shall maintain—

Record of policies and claims.

(a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.”.

22. For section 15 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

“15. (1) The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer.

Submission of returns.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.”.

Omission of section 16.

23. Section 16 of the Insurance Act shall be omitted.

Omission of sections 17 and 17A.

24. Sections 17 and 17A of the Insurance Act shall be omitted.

Amendment of section 20.

25. In section 20 of the Insurance Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be specified by regulations.”;

(ii) in sub-section (2), the words “or section 16” shall be omitted;

(iii) in sub-section (3), for the words “one rupee”, the words “such fee as may be specified by regulations” shall be substituted.

Amendment of section 21.

26. In section 21 of the Insurance Act,—

(i) in clause (d) of sub-section (1), the words and figures “or section 16” shall be omitted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Securities Appellate Tribunal may, on the application of an insurer and after hearing the Authority, cancel any order made by the Authority under clause (d) of sub-section (1) or may direct the acceptance of such a return which the Authority has declined to accept, if the insurer satisfies the Tribunal that the action of the Authority was in the circumstances unreasonable:

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the date when the Authority made the order or declined to accept the return.”.

Amendment of section 22.

27. In section 22 of the Insurance Act,—

(i) in sub-section (1), the words “or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16” shall be omitted;

(ii) in sub-section (2), the words “or, as the case may be, of sub-section (2) of section 16” shall be omitted.

Substitution of new sections for sections 27, 27A, 27B, 27C and 27D.

28. For sections 27, 27A, 27B, 27C and 27D of the Insurance Act, the following sections shall be substituted, namely:—

Investment of assets.

“27. (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of —

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India,

less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the manner following, namely, twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments as may be specified in the regulations subject to the limitations, conditions and restrictions specified therein.

(2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent. of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Explanation.— In this section, the term “assets” means all the assets of insurer at their carrying value but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or miscellaneous expenditure or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

(3) For the purposes of sub-sections (1) and (2), any specified assets shall, subject to such conditions, if any, as may be specified, be deemed to be assets invested or kept invested in approved investments specified by regulations.

(4) In computing the assets referred to in sub-sections (1) and (2) —

(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property, shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Authority may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in sub-sections (1) and (2) and where any direction has been issued under this proviso copies thereof shall be laid before each house of Parliament as soon as may be after it is issued.

(5) Where an insurer has accepted re-insurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-insurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved

in such acceptance and decreased by the amount of the liability involved in such cession.

(6) The Government securities and other approved securities in which assets are under sub-section (1) or (2) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(7) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

Further
provisions
regarding
investments.

27A. (1) No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) Notwithstanding anything contained in sub-section (1) or (2) of section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund or assets otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27 or fifteen per cent. of the assets referred to in sub-section (2) as the case may be;

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27,—

(a) invest in the shares of any one banking company, or

(b) invest in the shares or debentures of any one company,

more than the percentage specified by the regulations.

(4) An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27 invest or keep invested in the shares or debentures of any private limited company.

(5) All assets forming the controlled fund or assets as referred to in sub-section (2), of section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall (except for a part thereof not exceeding one-tenth of the controlled fund or assets as

referred to in sub-section (2) thereof in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Authority.

(7) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State legislature.

Explanation.—In this section “controlled fund” means—

(a) in the case of any insurer carrying on life insurance business—

(i) all his funds, if he carries on no other class of insurance business;

(ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and

(b) in the case of any other insurer carrying on life insurance business—

(i) all his funds in India, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also; but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

27B. (1) All assets of an insurer carrying on general insurance business shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27.

Provisions regarding investments of assets of insurer carrying general insurance business.

(2) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

(3) Without prejudice to the powers conferred on the Authority by sub-section (5) of section 27A nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) of section 27 after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

27C. An insurer may invest not more than five per cent. in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27 in the companies

Investment by insurer in certain cases.

belonging to the promoters, subject to such conditions as may be specified by regulations.

Manner and
condition of
investment.

27D. (1) Without prejudice to anything contained in this section, the Authority may, in the interests of the policy-holders, specify by the regulations, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999. 41 of 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

Prohibition for
investment of
funds outside
India.

27E. No insurer shall directly or indirectly invest outside India the funds of the policy-holders."

Substitution of
new section for
section 28,
section 28A and
section 28B.

29. For section 28, section 28A and section 28B of the Insurance Act, the following section shall be substituted, namely:—

Statement and
return of
investment of
assets.

"28. Every insurer shall submit to the Authority returns giving details of investments made, in such form, time and manner including its authentication as may be specified by the regulations."

Substitution of
new section for
section 29.

30. For section 29 of the Insurance Act, the following section shall be substituted, namely:—

Prohibition of
loans.

"29. (1) No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner:

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company, if the previous approval of the Authority is obtained for such loans:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

(2) The provisions of section 220 of the Companies Act, 1956 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. 1 of 1956.

(3) Subject to the provisions of sub-section (1), no insurer shall grant —

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by regulations including the loans sanctioned to the full-time employees of the insurer as per the scheme duly approved by its Board of Directors;

(b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the year immediately preceding.

(4) Where any event occurs given rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(5) In case of default in complying with the provisions of sub-section (4), the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months.”.

31. For section 30 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of section 30.

“30. If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policyholders, every director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.”.

Liability of directors, etc., for loss due to contravention of section 27, 27A, 27B, 27C, 27D or 29.

32. In section 31 of the Insurance Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 31.

“(1) None of the assets in India of any insurer shall, except in so far as assets are required to be vested in trustees under sub-section (7) of section 27, be kept otherwise than in the name of a public officer approved by the Authority, or in the corporate name of the undertaking, if a company or as the case may be an insurance co-operative society.”.

33. In section 31A of the Insurance Act,—

Amendment of section 31A.

(a) in sub-section (1), in clause (c) —

(i) in sub-clauses (i) and (ii) to the proviso, the following shall be substituted, namely:—

“(i) the payment of commission to an insurance agent, in respect of insurance business procured by or through him;”;

(ii) clause (iii) to the proviso shall be omitted;

(b) in sub-section (3), for the words, letter and figure “or in section 86B of the Indian Companies Act, 1913”, the words “or in the provision relating to assignment of office under the Companies Act, 1956” shall be substituted.

Substitution of new section for section 31B.

34. For section 31B of the Insurance Act, the following section shall be substituted, namely:—

Power to restrict payment of excessive remuneration.

“31B. No insurer shall in respect of insurance business transacted by him, shall pay to any person by way of remuneration, whether by way of commission or otherwise in excess of such sum as may be specified by the regulations.”

Omission of section 32.

35. Section 32 of the Insurance Act shall be omitted.

Amendment of section 32A.

36. In section 32A of the Insurance Act,—

(i) in sub-section (1), the words, figures and letter “specified in sub-clause (b) of clause (9) of section 2 and,” shall be omitted.

(ii) sub-sections (2) and (3) shall be omitted.

Amendment of section 32B.

37. In section 32B of the Insurance Act, for the words “rural or social sector, as may be specified in the Official Gazette by the Authority”, the words “rural and social sectors, as may be specified by regulations” shall be substituted.

Insertion of new section 32D.

38. After section 32C of the Insurance Act, the following section shall be inserted, namely:—

Obligation of insurer in respect of insurance business in third party risks of motor vehicles.

“32D. Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2008, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by regulations:

Provided that nothing in this section shall apply to an insurer carrying on the health insurance or re-insurance business only.”

Substitution of new section for section 33.

39. For section 33 of the Insurance Act, the following section shall be substituted, namely:—

Power of investigation and inspection by Authority.

“33. (1) The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person (hereafter in this section referred to as “Investigating Officer”) specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer:

Provided that the Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may

be, to produce before the Investigating Officer directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

(4) Any Investigating Officer, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer including a service provider or contractor where the services are outsourced by the insurer or intermediary or insurance intermediary, as the case may be, in relation to his business.

(5) The Investigating Officer shall, if he has been directed by the Authority to cause an inspection to be made, make a report to the Authority on such inspection.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be, to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing, —

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or

(c) direct any person to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be, if it is a company, whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause (b) or not.

(7) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers or intermediary or insurance intermediary, as the case may be, in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Officer to discharge satisfactorily his functions under this section.

Explanation.— For the purposes of this section, expression “insurer” shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(8) No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be, shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.”.

40. In section 34B of the Insurance Act, for sub-section (4), the following sub-section shall be substituted, namely:—

Amendment of
section 34B.

“(4) If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2), contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each

	day during which such contravention continues or one crore rupees, whichever is less.”.
Amendment of section 34C.	41. In section 34C of the Insurance Act, for sub-section (1), the following sub-section shall be substituted, namely:— “(1) If the Authority is of opinion that in the public interest or in the interest of an insurer or his policy-holders it is necessary so to do, it may, from time to time, by order in writing, appoint, in consultation with the Central Government with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer: Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.”.
Amendment of section 34E.	42. In section 34E of the Insurance Act, for the word “Controller”, the word “Authority” shall be substituted.
Omission of section 34G.	43. Section 34G of the Insurance Act shall be omitted.
Amendment of section 34H.	44. In section 34H of the Insurance Act,— (i) in sub-section (1), for the words “an officer authorised by the Authority”, the words “a Deputy Director” shall be substituted; (ii) in sub-sections (7) and (8), for the words “Central Government”, the words “Securities Appellate Tribunal” shall be substituted.
Amendment of section 35.	45. In section 35 of the Insurance Act,— (i) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.”; (ii) in sub-section (3), for clauses (b) and (c), the following clauses shall be substituted, namely :— “(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in such forms may be specified by regulation; (c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the regulations specified in this regard.”.
Substitution of new section for section 36.	46. For section 36 of the Insurance Act, the following section shall be substituted, namely:—
Sanction of amalgamation and transfer by Authority.	“36. When any application under sub-section (3) of section 35 is made to the Authority, the Authority shall cause, a notice of the application to be given to the holders of any kind of policy of insurer concerned alongwith statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and considering the objections of the policy-holders and any other persons whom it considers entitled to be heard, may approve the arrangement, and shall make such consequential orders as are necessary to give effect to the arrangement.”.

47. In section 37A of the Insurance Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

Amendment of section 37A.

“(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may notify in this behalf in the Official Gazette:

Provided that different dates may be specified for different provisions of the scheme.

(4A) Every policy-holder or shareholder or member of each of the insurers, before amalgamation, shall have the same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policy-holder or shareholder or member:

Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority in such manner as may be specified by regulations.

(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.

(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) may within thirty days from the publication of such assessment prefer an appeal to the Securities Appellate Tribunal.”.

48. For sections 38, 39 and 40 of the Insurance Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 38, 39 and 40.

“38. (1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.

Assignment and transfer of insurance policies.

(2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not *bona fide* or is not in the interest of the policy-holder or in public interest.

(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policy-holder not later than thirty days from the date of the policy-holder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy

or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being serviced or attached.

(6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (5) are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (5), recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.— Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub-section (10) hereunder, every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, will be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2008 shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that —

(a) the proceeds under the policy will become payable to the policyholder or the nominee or nominees in the event of either the assignee/or transferee predeceasing the insured; or

(b) the insured surviving the term of the policy,
shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

(11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured

by partial assignment or transfer and such policy-holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

39. (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Nomination by
policy-holder.

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policy-holder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy-holder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially

entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2008.

(11) Every policy-holder shall have an option to indicate in clear terms whether the person or persons being nominated by the policy-holder is/are a beneficiary nominee(s) or a collector nominee(s):

Provided where the policy-holder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation.—For the purposes of this sub-section,—

(a) the expression ‘beneficiary nominee’ means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act; and

(b) the expression ‘collector nominee’ means a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs of policy-holders or representative.

(12) The collector nominee shall make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs or representative of the policy-holder in accordance with the regulations made by the Authority.

(13) Where a policy-holder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women’s Property Act, 1874, applies or has at any time applied: 3 of 1874.

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2008, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

40. (1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by regulations.

(2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

(3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to rupees one lakh."

49. Section 40A of the Insurance Act shall be omitted.

Omission of section 40A.

50. For section 40B and section 40C of the Insurance Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 40B and 40C.

"40B. Every insurer transacting life insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by regulations.

Limitation of expenses of management in life insurance business.

40C. Every insurer transacting general insurance, health insurance or re-insurance business shall submit to the Authority, the details of expenses of management in such manner and form as may be specified by regulations."

Limitation of expenses of management in general, health insurance and re-insurance business.

51. In section 41 of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 41.

"(2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to five lakh rupees."

52. For section 42 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 42.

"(1) An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business:

Appointment of insurance agents.

Provided that such person does not suffer from any of the disqualifications mentioned in sub-section (3).

(2) No person shall act as an insurance agent for more than one life insurer and one general insurer.

(3) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurer or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or insured;

(e) that in the case of an individual, who does not possess the requisite qualifications or practical training or passed the examination, as may be specified by the regulations;

(f) that in the case of a company or firm making, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications or practical training and have not passed such an examination as required under clauses (e) and (g);

(g) that he has not passed such examination as may be specified by the regulations;

(h) that he has violated the code of conduct specified by the regulations.

(4) Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees."

53. Sections 42A, 42B and 42C of the Insurance Act shall be omitted.

54. In section 42D of the Insurance Act,—

(i) For the words "licence" and "licence issued", wherever they occur, the words "registration" and "registration made", shall respectively be substituted.

(ii) in sub-section (1), in clause (a) of the proviso, for the word, brackets and figure "sub-section (4)", the word, brackets and figure "sub-section (3)" shall be substituted;

(iii) in sub-section (3), for the words, letters, brackets and figures "in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42", the following shall be substituted, namely:—

"in clauses (b), (c), (d), (e) and (g) of sub-section (3) of section 42."

55. For section 42E of the Insurance Act, the following section shall be substituted, namely:—

"42E. Without prejudice to the provisions contained in this Act, the Authority may, by regulations made in this behalf, specify the requirements of capital, form of business and other conditions, to act as an intermediary or an insurance intermediary."

56. For section 43 of the Insurance Act, the following section shall be substituted, namely:—

"43. (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

Omission of sections 42A, 42B and 42C.

Amendment of section 42D.

Substitution of new section for section 42E.

Condition for intermediary or insurance intermediary.

Substitution of new section for section 43.

Record of insurance agents.

(2) The record prepared by the insurer under sub-section (1), shall be maintained for a period of five years."

57. Section 44 of the Insurance Act shall be omitted.

Omission of section 44.

58. For sections 44A and 45 of the Insurance Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 44A and 45.

'44A. For the purposes of ensuring compliance with the provisions of sections 40, 40B, 40C the Authority may, by notice—

Power to call for information.

(a) require from an insurer such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer to submit for his examination at the principal place of business of the insurer in India, any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer on oath, in relation to any such information, book, register, document or statement and the insurer, shall comply with any such requirement within such time as may be specified in the notice.

45. (1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, *i.e.*, from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

Policy not be called in question on ground of mis-statement after five years.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I.—For the purposes of this sub-section, the expression "fraud" means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:—

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II.—Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer.

Explanation.—A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation.—For the purposes of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

59. Sections 47A and 48 of the Insurance Act shall be omitted.

60. For section 48A of the Insurance Act, the following section shall be substituted, namely:—

"48A. No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company:

Provided that any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2008 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act:

Provided further that the Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policy-holders or to avoid conflict of interest."

61. In section 49 of the Insurance Act, in sub-section (1),—

(i) for the words "being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2" shall be omitted;

(ii) for the words "or to the Central Government under section 11 of the Indian Life Insurance Companies Act, 1912" shall be omitted.

62. For sections 52 and 52A of the Insurance Act, the following sections shall be substituted, namely:—

Omission of sections 47A and 48.

Substitution of new section for section 48A.

Insurance agent or intermediary or insurance intermediary not to be directors in insurance company.

Amendment of section 49.

Substitution of new sections for sections 52 and 52A.

"52. No insurer shall commence any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Prohibition of business on dividing principle.

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

52A. (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, it may, after giving such opportunity to the insurer to be heard appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

When Administrator for management of insurance business may be appointed.

(2) The Administrator shall receive such remuneration as the Authority may direct and the Authority may at any time cancel the appointment and appoint some other person as Administrator."

63. In section 52BB of the Insurance Act,—

Amendment of section 52BB.

(a) in sub-section (2), for the words "the Central Government and the Central Government", the words "Securities Appellate Tribunal and the Securities Appellate Tribunal" shall be substituted;

(b) in sub-section (3), for the words "Central Government", the words "Securities Appellate Tribunal", shall be substituted;

(c) in sub-section (10), in clause (a), the words "or the Central Government" shall be omitted.

64. For section 52D of the Insurance Act, the following section shall be substituted, namely:—

Substitution of section 52D.

"52D. If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of Administrator or any other person appointed by the insurer in this behalf."

Termination of appointment of Administrator.

65. In section 52E the words "Central Government" are to be replaced by the word "Authority".

Amendment of section 52E.

66. In section 52F of the Insurance Act, for the words "punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both", the words "liable to penalty of rupees ten thousand each day during which such failure continues or rupees ten lakh, whichever is less" shall be substituted.

Amendment of section 52F.

67. In section 52G of the Insurance Act, in sub-section (2), the words "Central Government or" shall be omitted.

Amendment of section 52G.

68. Sections 52H to 52N (both inclusive) of the Insurance Act shall be omitted.

Omission of sections 52H to 52N.

69. In section 53 of the Insurance Act,—

Amendment of section 53.

(a) in sub-section (1), the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the purpose of sections 53 to 61A, "Tribunal" means National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956.;

1 of 1956.

(b) in sub-section (2), in clause (b), sub-clause (i) shall be omitted.

Amendment of section 58.

70. In section 58 of the Insurance Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under section 15 of the Companies Act, 1956, and the provisions of section 17 of that Act shall apply accordingly."

Omission of section 59.

71. Section 59 of the Insurance Act, shall be omitted.

Omission of sections 62, 63 and 64.

72. Sections 62 to 64 (both inclusive) of the Insurance Act, shall be omitted.

Amendment of heading.

73. In Part II A of the Insurance Act, for the heading "INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND COMMITTEES THEREOF" the following heading shall be substituted, namely:—

"LIFE INSURANCE COUNCIL AND GENERAL INSURANCE COUNCIL AND COMMITTEES THEREOF."

Omission of sections 64A and 64B.

74. Sections 64A and 64B of the Insurance Act, shall be omitted.

Substitution of new sections for sections 64C and 64D.

75. For sections 64C and 64D of the Insurance Act, the following sections shall be substituted, namely:—

"64C. On and from the date of commencement of the Insurance Laws (Amendment) Act, 2008,—

(a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and

(b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India,

shall be deemed to have been constituted as the respective Councils under this Act.

Authorisation to represent in Councils.

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any of its officer to act as the representative of such member at any meeting of the Council concerned."

Substitution of new section for section 64F.

76. For section 64F of the Insurance Act, the following section shall be substituted, namely:—

"64F. (1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) four representatives of members of the Life Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

Executive Committees of the Life Insurance Council and the General Insurance Council.

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) three persons to represent insurance agents, intermediaries and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the Life Insurance Council.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) four representatives of members of the General Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) four persons to represent insurance agents, third party administrators, surveyors and loss assessors and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the General Insurance Council.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) Each of the said Executive Committees may make bye-laws for the transaction of any business at any meeting of the said Committee.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be appointed by the Executive Committee concerned:

Provided that each Secretary appointed by the Executive Committee concerned shall exercise all such powers and do all such acts as may be authorised in this behalf by the Executive Committee concerned.”.

77. In section 64G of the Insurance Act, in sub-section (2), for the words “by nomination by the Authority”, the words “in such manner as may be laid down in the bye-laws of the Council concerned” shall be substituted. Amendment of section 64G.

78. Section 64-I of the Insurance Act, shall be omitted. Omission of section 64-I.

79. In section 64J of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 64J.

“(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the Life Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on life insurance business.”.

Amendment of
section 64L.

80. In section 64L of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on general insurance business.”.

Amendment of
section 64N.

81. In section 64N of the Insurance Act, for the words “the Central Government may prescribe”, the words “the Authority may specify” shall be substituted.

Amendment of
section 64R.

82. In section 64R of the Insurance Act, in sub-section (1),—

(a) for clause (c), the following clause shall be substituted, namely:—

“(c) keep and maintain up to date a copy of list of all insurers who are members of the either Council.”.

(b) in clause (d), for the words “with the previous approval of the Authority make regulations for”, the words “make bye-laws for” shall be substituted.

Omission of
section 64S and
64T.

83. Sections 64S and 64T of the Insurance Act, shall be omitted.

Omission of
sections 64U to
64UL.

84. Sections 64U to 64UL (both inclusive) of the Insurance Act, shall be omitted.

Insertion of new
section 64ULA.

85. After section 64UL of the Insurance Act, the following section shall be inserted, namely:—

“64ULA. (1) Notwithstanding anything contained in this Part, until the rates, advantage and terms and conditions laid-down by the Advisory Committee under section 64UC are de-notified by the Authority with effect from such date as the Authority may by notification in the Official Gazette determine, and the rates, advantages and terms and conditions are decided by the insurer concerned, the rates, advantages and terms and conditions notified by the Advisory Committee shall continue to be in force and shall always be deemed to have been in force and any such rates, advantages and terms and conditions shall be binding on all the insurers.

(2) The Authority shall, in consultation with the Central Government, prepare a scheme for the existing employees of the Tariff Advisory Committee on its dissolution, keeping in view the interests of such employees on such terms and conditions as it may, by order, determine.”.

Substitution of
new section for
section 64UM.

86. For section 64UM of the Insurance Act, the following section shall be substituted, namely:—

Surveyors or
loss assessors.

“64UM. Save as otherwise provided in this section and the regulations made thereunder, no person shall act as a surveyor or loss assessor in respect of general Insurance business.”.

Substitution of
new sections for
sections 64V
and 64VA.

87. For sections 64V and 64VA of the Insurance Act, the following sections shall be substituted, namely:—

Assets and
liabilities how
to be valued.

“64V. (1) For the purpose of ascertaining compliance with the provisions of section 64VA, assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.

(2) A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf.

(3) Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority, in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by regulations.

64VA. (1) Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent. of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. Sufficiency of assets.

(2) An insurer or re-insurer, as the case may be, who does not comply with sub-section (1), shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority.

(3) The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with the provisions of sub-section (4) without prejudice to taking of any other remedial measures as deemed fit:

Provided that if in respect of any insurer the Authority is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section will cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with such modifications provided that such modifications shall not result in the control level of solvency being less than what is stipulated under sub-section (1).

(4) If, at any time, an insurer or re-insurer does not maintain the required control level of solvency margin, he shall, in accordance with the directions issued by the Authority, submit a financial plan to the Authority, indicating a plan of action to correct the deficiency within a specified period not exceeding six months.

(5) An insurer who has submitted a plan, as required under sub-section (4), the Authority shall propose modifications to the plan, if the Authority considers the same inadequate, and in such an eventuality, the Authority shall give directions, as may be deemed necessary, including direction in regard to transacting any new business, or, appointment of an administrator or both.

(6) An insurer or re-insurer, as the case may be, who does not comply with the provisions of sub-section (4) shall be deemed to have made default in complying with the requirements of this section.

(7) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets and liabilities of any insurer or re-insurer, or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date, and the insurer or re-insurer, as the case may be, shall comply with any requisition made in this behalf by the Authority, and in the event of any failure to do so within two months from the receipt of the requisition, the insurer or re-insurer, as the case may be, shall be deemed to have made default in complying with the requirements of this section.

(8) In applying the provisions of sub-section (1) to any insurer or re-insurer, as the case may be, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance of the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Authority may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so, however that the total period may not in any case exceed one year.

(9) Every insurer shall furnish to the Authority return giving details of solvency margin in such form, time, manner including its authentication as may be specified by the regulations."

88. For section 64VC of the Insurance Act, the following section shall be substituted, namely:—

"64VC. No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business or close a place in India or outside India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India or outside India, except in the manner as may be specified by regulations."

62 of 2008.

89. PART III and IIIA of the Insurance Act, shall be omitted.

90. PART IV of the Insurance Act, shall be omitted.

91. For section 102 of the Insurance Act, for the words "not exceeding five lakh rupees for each such failure and punishable with fine", the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

92. For sections 103 and 104 of the Insurance Act, the following sections shall be substituted, namely:—

"103. If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a fine not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.

104. If a person fails to comply with the provisions of section 27, section 27A, section 27B, section 27D and section 27E, he shall be liable to a penalty not exceeding twenty-five crore rupees."

93. In section 105 of the Insurance Act, for the words "not exceeding two lakh rupees for each such failure", the words "not exceeding one crore rupees" shall be substituted.

94. For sections 105B and 105C of the Insurance Act, the following sections shall be substituted, namely:—

"105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees.

Substitution of new section for section 64VC.

Restrictions on the opening of a new place of business.

Omission of Part III and IIIA.

Omission of Part IV.

Amendment of section 102.

Substitution of new sections for sections 103 and 104.

Penalty for carrying on insurance business in contravention of section 3.

Penalty for contravention of sections 27, 27A, 27B, 27D and 27E.

Amendment of section 105.

Substitution of new sections for sections 105B and 105C.

Penalty for failure to comply with sections 32B, 32C and 32D.

105C. (1) For the purpose of adjudication under sub-section (2) of section 2CB, sub-section (4) of section 34B, sub-section (2) of section 40A, sub-section (2) of section 41, sub-section (4) of section 42, section 102, section 104, section 105 and section 105B, the Authority, shall appoint any officer not below the rank of a Joint Director to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard.

Power to
adjudicate.

(2) Upon receipt of the inquiry report from the officer so appointed, the Authority after giving an opportunity of being heard to the person concerned may impose any penalty provided in sections aforesaid.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if on such inquiry, is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may recommend such penalty as he thinks fit in accordance with the provisions of any of those sections.

105D. While recommending the quantum of penalty under section 105C, the adjudicating officer and while imposing such penalty, the Authority shall have due regard to the following factors, namely:—

Factors to be
taken into
account by the
adjudicating
officer.

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to the policy-holders as a result of the default; and

(c) the repetitive nature of default."

95. In section 106A of the Insurance Act, in sub-section (2), clauses (a), (b) and (f) shall be omitted and in clause (a), the words 'or a provident society' shall be omitted.

Amendment of
section 106A.

96. Sections 107 and 107A of the Insurance Act shall be omitted.

Omission of
section 107 and
107A.

97. For section 109 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 109.

"109. No court shall take cognizance of any offence punishable under this Act or any rules or any regulations made thereunder, save on a complaint made by an officer of the Authority or by any person authorised by it."

Cognizance of
Offence.

98. For section 110 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 110.

"110. (1) Any person aggrieved—

Appeal to
Securities
Appellate
Tribunal.

(a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2008, or under this Act, the rules or regulations made thereunder, or

(b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every Appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Authority is received by him and it shall be in such a form and be accompanied by such fees as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, conforming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of appeal.

(6) The procedure for filing and disposing of an appeal shall be such as may be prescribed.

(7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act, 1992. 15 of 1992.

99. Section 110E of the Insurance Act, shall be omitted.

100. Sections 110G and 110H of the Insurance Act, shall be omitted.

101. After section 110H of the Insurance Act, the following section shall be inserted, namely:—

“110AA. Any penalty imposed by the Authority under this Act shall be recoverable as an arrear of land revenue.”.

102. In section 111 of the Insurance Act, the words “provident societies”, wherever they occur, shall be omitted.

103. For section 113 of the Insurance Act, the following section shall be substituted, namely:—

“113. (1) A policy of life insurance shall acquire surrender value as per the norms specified by the regulations.

(2) Every policy of life insurance shall contain the formula as approved by the Authority for calculation of guaranteed surrender value of the policy.

(3) Notwithstanding any contract to the contrary, a policy of life insurance under a non-linked plan which has acquired a surrender value shall not lapse by reason of non-payment of further premiums but shall be kept in force to the extent of paid-up sum insured, calculated by means of a formula as approved by the Authority, and contained in the policy, and the reversionary bonuses that have already been attached to the policy:

Omission of section 110E.

Omission of sections 110G and 110H.

Insertion of new section 110AA.

Penalty to be recoverable as arrear of land revenue.

Amendment of section 111.

Substitution of new section for section 113.

Acquisition of surrender value by policy.

Provided that a policy of life insurance under a linked plan shall be kept in force in the manner as may be specified by the regulations.

(4) The provisions of sub-section (3) shall not apply—

(i) where the paid-up sum insured by a policy, inclusive of attached bonuses, is less than the amount specified by the Authority or takes the form of annuity of amount less than the amount specified by the Authority; or

(ii) when the parties after the default has occurred in payment of the premium agree in writing to other arrangement.”.

104. In section 114 of the Insurance Act, in sub-section (2),—

Amendment of
section 114.

(i) clauses (c) and (f) shall be omitted;

(ii) after clause (l), the following clauses shall be inserted, namely:—

“ (la) the manner of inquiry under sub-section (l) of section 105C;

(lb) the form in which an appeal may be preferred under sub-section (2) and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section (6) of section 110.”.

105. In section 114A of the Insurance Act, in sub-section (2),—

Amendment of
section 114A.

(i) for clauses (a) and (aa), the following clause shall be substituted, namely:—

“(a) manner of making application for registration and documents to be accompanied under sub-section (2) of section 3;”;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) such annual fee to the Authority and manner of payment under sub-section (l) of section 3A;”;

(iii) after clause (d), the following clauses shall be inserted, namely:—

“(da) such minimum annuity and other benefits to be secured by the insurer under section 4;

(db) such equity capital and such forms of capital including hybrid capital required under sub-section (l) of section 6A;”;

(iv) after clause (e), the following clause shall be inserted, namely:—

“(ea) separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business as required under sub-section (l) and sub-section (2A) of section 10; and its waiver under the said section;”;

(v) in clause (f), for the words “under sub-section (1A) of section 11”, the words “under sub-section (l) of section 11” shall be substituted;

(vi) for clause (g), the following clause shall be substituted, namely:—

“(g) the manner in which an abstract of the report of the actuary to be specified and the form and manner in which the statement referred to in section 13 shall be appended;”;

(vii) for clause (h), the following clause shall be substituted, namely:—

“(h) the fee for procuring a copy of return or any part thereof under sub-section (l) of section 20;”;

(viii) for clause (i), the following clause shall be substituted, namely:—

“(i) investment of assets and further provisions regarding investments by an insurer and investment by insurers in certain cases under sections 27, 27A,

27B, 27C and time, manner and other conditions of investment of assets under section 27D;"

(ix) for clauses (ia), (ib), (ic), (id) and (ie), the following clauses shall be substituted, namely:—

"(ia) the form in which a return giving details of investments made, time and manner including its authentication under section 28;

(ib) the loans including the loans sanctioned to the full-time employees of the insurer under clause (a) of sub-section (3) of section 29;

(ic) the sum to be paid by the insurer to any person under section 31B;

(id) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under section 32B and 32C;

(ie) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D;"

(x) for clause (j), the following clause shall be substituted, namely:—

"(j) the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications in that connection and all other matters incidental thereto under sub-section (7) of section 33;"

(xi) after clause (j), the following clauses shall be inserted, namely:—

"(ja) the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance business are to be prepared under clauses (b) and (c) of sub-section (3) of section 35;

(jb) the manner of assessment of compensation under the proviso to sub-section (4A) of section 37A;

(jc) the fee to be charged by the insurer under sub-section (3) of section 39;

(jd) the manner of payment of benefits under sub-section (12) of section 39;

(je) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40;

(jf) the manner and form of expenses of management under section 40B and 40C."

(xii) clauses (k) and (l), shall be omitted;

(xiii) for clause (m), the following clause shall be substituted, namely:—

"(m) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42;"

(xiv) clause (n), shall be omitted;

(xv) for clause (o), the following clause shall be substituted, namely:—

"(o) the code of conduct under clause (h) of sub-section (3) of section 42;"

(xvi) clause (p), shall be omitted;

(xvii) clause (va), shall be omitted;

(xviii) in clause (vb), the words, brackets and figure "sub-section (2) of" shall be omitted;

(xix) clause (w), shall be omitted;

(xx) for clause (y), the following clause shall be substituted, namely:—

"(y) the manner of exclusion of certain assets under sub-section (1), the manner of valuation of liabilities under sub-section (2) and time for furnishing statement under sub-section (3) of section 64V;"

(xxi) for clause (za), the following clause shall be substituted, namely:—

"(za) the matters specified under sub-section (1) of section 64VA relating to sufficiency of assets;"

(xxii) after clause (zaa), the following clauses shall be inserted, namely:—

"(zab) the form, time, manner including authentication of the return giving details of solvency margin under sub-section (9) of section 64VA;

(zac) the manner of opening and closing places of business under section 64VC;"

(xxiii) after clause (zb), the following clause shall be added, namely:—

"(zba) the norms for surrender value of life insurance policy under sub-section (1) of section 113;"

106. In the Insurance Act, the Fifth Schedule, the Sixth Schedule and the Eighth Schedule shall be omitted.

Omission of the Fifth, the Sixth and the Eighth Schedule.

CHAPTER III

AMENDMENT TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

57 of 1972.

107. In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:—

Insertion of a new section after section 10A.

"10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf."

Enhancement of equity capital of General Insurance companies.

57 of 1972.

108. Section 25 of the General Insurance Business (Nationalisation) Act, 1972 shall be omitted.

Omission of section 25.

CHAPTER IV

AMENDMENT TO INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

41 of 1999.

109. In section 2 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (1),—

Amendment of section 2.

(i) in clause (b), after the words "Development Authority", the words "of India", shall be inserted;

(ii) in clause (f), after the words "insurance consultants", the words "Insurance agents, third party administrator" shall be inserted.

41 of 1999.

110. In section 3 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (1), after the words "Development Authority" the words "of India" shall be inserted.

Amendment of section 3.

41 of 1999.

111. In section 16 of Insurance Regulatory and Development Authority Act, 1999, in sub-section (1) clause (c) shall be omitted.

Amendment of section 16.

STATEMENT OF OBJECTS AND REASONS

The Insurance Act, 1938 (Insurance Act) provides for and regulates the insurance business in the country. However, with the enactment of the Insurance Regulatory and Development Authority Act, 1999 (the IRDA Act), the insurance business was opened up to the private sector. As a result of opening up of the insurance business, the number of insurance companies has increased from six nationalised companies in 1999 to forty-two insurance companies as on today. The IRDA Act paved the way for establishment of the Insurance Regulatory and Development Authority (IRDA) to protect the interest of holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. The General Insurance Business (Nationalisation) Act (GIBNA), 1972 nationalised the general insurance business in India and provided for the acquisition and transfer of shares of Indian general insurance companies, in order to serve better the need of the economy, by securing the development of general insurance business in the best interest of the public.

2. The Law Commission of India, at the request of IRDA, had reviewed these Acts and submitted its 190th report relating to the revision of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 to Government on 1st June, 2004. The report covered legal issues concerning repudiation of the life insurance policies; nominations; assignment and transfer of policies; merger of IRDA Act with the Insurance Act, 1938; setting up of the Grievance Redressal Authorities, Insurance Appellate Authority, amendment to definitions and deletion of redundant provisions. An expert committee under Shri K.P. Narsimhan (Ex-Chairman of the LIC) was set-up by the IRDA on the recommendation of the Law Commission. The KPN Committee examined various issues relating to Surveyors and Loss Assessors, Investments, Tariff, Shareholders and Policyholders Funds and extent of Foreign Shareholdings in the Indian insurance companies and co-operative societies. It submitted its report to IRDA on 26th July, 2005. The reports submitted by the Law Commission and the KPN Committee were examined by IRDA and the IRDA forwarded its recommendations on amendment of insurance laws to the Government on 16th March, 2006. The recommendations have been considered and finalised by the Government in consultation with General Insurers Public Sector's Association (GIPSA) and General Insurance Corporation of India (GIC) to amend the Insurance Act, 1938, General Insurance Business (Nationalisation) Act, 1972 and Insurance Regulatory and Development Authority Act, 1999.

3. The Insurance Laws (Amendment) Bill, 2008 proposes to amend the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 and the General Insurance Business (Nationalisation) Act, 1972. The said Bill, *inter alia*, seeks to:—

(i) define "health insurance business" and provides for a minimum paid-up equity capital of Rs. 50 crore in case of insurers carrying on exclusively the business of health insurance;

(ii) raise the foreign equity in Indian insurance company from 26% to 49% and maintain foreign direct investment cap at 26% for the Insurance Co-operative Societies;

(iii) permit foreign re-insurers to open branches only for re-insurance business in India;

(iv) facilitate entry of Lloyd's of London in insurance business in India as a foreign company in joint venture with Indian partners and also as branch of foreign re-insurer;

(v) provide for permanent registration of the insurers with annual renewal fee and right to cancel the registration on breach of conditions specified by the IRDA;

(vi) remove restriction on divestment by Indian promoters of insurance companies, which were required earlier to divest to 26% or such other, prescribed percentage in the manner and period prescribed by the Central Government;

(vii) remove requirements of deposits by insurers for registration in view of these being regulated by the IRDA on the basis of solvency margin;

(viii) provide obligatory underwriting of third party risks of motor vehicles on the pattern of insurance in rural areas and social sectors;

(ix) make provision for absolute and conditional assignments of life insurance policies;

(x) make provision for distinction between a beneficiary nominee and a collector nominee in life insurance policies;

(xi) entrust responsibility of appointing insurance agents to insurers and IRDA to regulate their eligibility, qualifications and other aspects;

(xii) make life insurance policy unchallengeable on whatsoever ground after five years of issue of the policy and limiting the grounds for challenge during the period within five years;

(xiii) delete provisions relating to Tariff Advisory Committee (TAC) in view of the detariffing of rates and premiums w.e.f. 1st January, 2007;

(xiv) provide for making Life Insurance Council and General Insurance Council as self-regulating bodies by empowering them to frame bye-laws for elections, meetings, levy and collection of fees from its members;

(xv) provide for fine up to Rs. 25 crore and imprisonment up to 10 years for carrying on insurance business without registration;

(xvi) provide for penalty of "not exceeding twenty-five crore rupees" in case an insurer fails to comply with the obligations for rural or social sector or third party insurance of motor vehicles;

(xvii) provide for powers of adjudication to the Authority and appeal to Securities Appellate Tribunal against the decisions of the Authority;

(xviii) bar courts from taking cognizance of any offence punishable under the Insurance Act, save on a complaint made by an officer of the IRDA;

(xix) delete redundant provisions and make consequential amendments to various provisions in the Insurance Act;

(xx) allow insurance companies to raise newer capital through newer instruments on the pattern of banks;

(xxi) formulate regulations for payment of commission and control of management expenses;

(xxii) formulate regulations for opening and closing of foreign branches and the closing of domestic branches of Indian insurers and norms for opening domestic branches;

(xxiii) address matters relating to the functions, code of conduct, etc., of surveyors and loss assessors in the existing regulations;

(xxiv) allow nationalised general insurance companies to raise money from the market with the permission of the Central Government for increasing their business in rural and social sector, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf; and

(xxv) include "insurance agent" in the definition of "insurance intermediaries" in the IRDA Act.

4. The proposed amendments are aimed at bringing improvement and revision of the laws relating to insurance business in the changed scenario of private participation. It also incorporates certain provisions to provide IRDA with flexibility to discharge its functions effectively and efficiently.

5. The Bill seeks to achieve the above objects.

PAWAN KUMAR BANSAL

Notes on clauses

Clause 2.—This clause seeks to substitute the words “Indian Companies Act, 1913” throughout the Insurance Act, 1938 (hereinafter referred to as the Act) with the words “the Companies Act, 1956”.

Clause 3.—This clause seeks to amend section 2 of the Act to substitute, amend, insert the definitions of actuary, health insurance business, Indian insurance company, insurance co-operative society, insurer, regulation, re-insurance, Securities Appellate Tribunal and omit certain redundant clauses from definitions.

Clause 4.—This clause seeks to substitute section 2C of the Act so as to prohibit insurance business without registration but provide relaxation to special economic zone and regulate re-insurance through its branch office by a foreign insurer.

Clause 5.—This clause seeks to amend section 2CA of the Act to exempt from application of the provisions of the Act to the foreign insurers also in special economic zone.

Clause 6.—This clause seeks to insert a new section 2CB in the Act to prohibit insurance of the properties in India, ship, vessel, aircraft registered in India from foreign insurer except the properties situated in special economic zones. It also proposed a penalty of five crore of rupees for contravention of this provision.

Clause 7.—This clause seeks to omit section 2E of the Act relating to insurers, who enter into new contracts before commencement of the Act, as it has become redundant.

Clause 8.—This clause seeks to amend section 3 of the Act to regulate the manner of making application for registration of insurers by regulation and provide for appeal to Securities Appellate Tribunal against the refusal of registration by the Authority and suspension or cancellation of registration in certain cases.

Clause 9.—This clause seeks to substitute section 3A of the Act to provide for annual fee in place of annual renewal of registration of insurers by regulation.

Clause 10.—This clause seeks to substitute section 4 of the Act to provide for minimum limit for annuities and other benefits secured by policy of life insurance by regulations.

Clause 11.—This clause seeks to amend section 5 of the Act to omit redundant provisions.

Clause 12.—This clause seeks to substitute section 6 of the Act to provide for capital of rupees fifty crore for exclusive health insurance business and minimum net owned funds of rupees five thousand crore for a foreign re-insurer opening branch in India.

Clause 13.—This clause seeks to amend section 6A of the Act to regulate the capital structure, voting rights, maintenance of records of the shareholders, etc., of life, general, health insurance and re-insurance companies and to omit certain redundant provisions.

Clause 14.—This clause seeks to omit section 6AA of the Act relating to manner of divesting of the excess shareholding by promoters in certain cases.

Clause 15.—This clause seeks to amend section 6B of the Act to include general, health insurance business and re-insurance for compliance of capital structure and empower the Authority to regulate the same in place of the Central Government.

Clause 16.—This clause seeks to omit sections 6C, 7, 8 and 9 of the Act relating to capital structure, company limited by guarantee and deposits by the insurers before registration.

Clause 17.—This clause seeks to amend section 10 of the Act to empower the Authority to regulate the separation of accounts and funds of insurers.

Clause 18.—This clause seeks to substitute section 11 of the Act to empower the Authority to regulate preparation of annual accounts and balance-sheet by insurers.

Clause 19.—This clause seeks to substitute section 12 of the Act to provide audit of insurance business.

Clause 20.—This clause seeks to amend section 13 of the Act to omit the redundant provisions relating to actuarial investigation and empower the Authority to regulate the insurance business through actuaries.

Clause 21.—This clause seeks to substitute section 14 of the Act to provide for maintenance of records of policies and claims electronically also.

Clause 22.—This clause seeks to substitute section 15 of the Act to omit certain redundant provisions relating to submission of returns by insurers.

Clause 23.—This clause seeks to omit section 16 of the Act relating to returns by insurers established outside India.

Clause 24.—This clause seeks to omit sections 17 and 17A of the Act relating to exemption from certain provisions of the Indian Companies Act, 1913 and furnishing of balance sheet and accounts to Registrar of Companies and non-application of the Act to the preparation of accounts for the period prior to 1968.

Clause 25.—This clause seeks to amend section 20 of the Act to empower the Authority to regulate inspection and filing of copy of the returns of the insurers and fee.

Clause 26.—This clause seeks to amend section 21 of the Act to provide for appeal to the Security Appellate Tribunal by insurers against the final order of the Authority not accepting a return or other statement submitted to it.

Clause 27.—This clause seeks to amend section 22 of the Act to make consequential amendments relating to powers of the Authority.

Clause 28.—This clause seeks to substitute sections 27, 27A, 27B, 27C and 27D of the Act to provide for broad guidelines for investment by insurers and prohibit investment of funds outside India. The objective is to make the investment provisions more effective.

Clause 29.—This clause seeks to substitute sections 28, 28A and 28B to empower the Authority to regulate statements, returns of investment of assets.

Clause 30.—This clause seeks to substitute section 29 of the Act to provide for granting of loans or advances to subsidiaries of insurance companies with the prior approval of the Authority.

Clause 31.—This clause seeks to substitute section 30 of the Act to provide for liability of directors, managers or officers for loss sustained by insurer or policy-holders due to contravention of the provisions relating to investments.

Clause 32.—This clause seeks to amend section 31 of the Act to provide that none of the assets in India of any insurer shall be kept otherwise than in the name of a public officer approved by the Authority.

Clause 33.—This clause seeks to amend section 31A of the Act to omit redundant provisions relating to management of the insurance companies.

Clause 34.—This clause seeks to substitute section 31B of the Act to empower the Authority to regulate the payment of excessive remuneration.

Clause 35.—This clause seeks to omit section 32 of the Act relating to employment of managing agents.

Clause 36.—This clause seeks to amend section 32A of the Act to prohibit the common officer for insurers and prescribe a full-time officer.

Clause 37.—This clause seeks to amend section 32B of the Act to provide for insurance business in rural and social sector in place of rural or social sector.

Clause 38.—This clause seeks to insert section 32D in the Act for obligation on all insurers in respect of third party risks of motor vehicles.

Clause 39.—This clause seeks to substitute section 33 of the Act to provide for coverage of intermediary or insurance intermediary for investigation and inspection by the Authority.

Clause 40.—This clause seeks to amend section 34B to enhance the penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less, for contravention of the orders of the Authority for removal of managerial person from office.

Clause 41.—This clause seeks to amend section 34C of the Act to provide for consultation with the Central Government for appointment of Additional Directors of the insurers by the Authority in public interest.

Clause 42.—This clause seeks to amend section 34E of the Act to substitute the word “Controller” with the word “Authority”.

Clause 43.—This clause seeks to omit section 34G of the Act relating to the power of the Authority to order closure of foreign branches of Indian insurance companies.

Clause 44.—This clause seeks to amend section 34H of the Act to designate Deputy Director of the Authority as authority for search and seizure ordered by the Authority and substitute the Securities Appellate Tribunal in place of the Central Government.

Clause 45.—This clause seeks to amend section 35 of the Act to empower the Authority to regulate amalgamation and transfer of insurance business.

Clause 46.—This clause seeks to substitute section 36 of the Act relating to the sanction of amalgamation and transfer of insurance business by the Authority by omitting redundant provisions.

Clause 47.—This clause seeks to amend section 37A of the Act to provide for the scheme for amalgamation to be notified in the Official Gazette after approval of the Central Government. It also gives rights to policy-holder or shareholder or member of each of the insurers to file an appeal in the Securities Appellate Tribunal against the recommendation of the Authority for amalgamation.

Clause 48.—This clause seeks to substitute sections 38, 39 and 40 of the Act dealing with assignment and transfer of insurance policies to make a clear distinction between absolute and conditional assignments of life policies. It also provides for a clear distinction between a beneficial nominee and a collector nominee by order to provide timely and adequate benefits to the policy-holders. It also empowers the Authority to regulate payment of commission for procuring business.

Clause 49.—This clause seeks to omit section 40A of the Act to omit the redundant provisions relating to limitation of expenditure on commission.

Clause 50.—This clause seeks to substitute sections 40B and 40C of the Act to regulate management expenses of life, general and health insurers and re-insurers.

Clause 51.—This clause seeks to amend section 41 of the Act by enhancing the penalty from five hundred rupees up to five lakh rupees in case an insurer contravenes the provision relating to prohibition of rebates.

Clause 52.—This clause seeks to substitute section 42 of the Act to regulate the appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects.

Clause 53.—This clause seeks to omit sections 42A, 42B and 42C of the Act relating to registration and regulation of principal agents, chief agents and special agents.

Clause 54.—This clause seeks to amend section 42D of the Act to provide for registration in place of licensing of intermediary or insurance intermediary by the Authority.

Clause 55.—This clause seeks to substitute section 42E of the Act to regulate requirement of capital, form of business and other conditions for intermediary or insurance intermediary.

Clause 56.—This clause seeks to substitute section 43 of the Act to enable the insurers to keep the records electronically.

Clause 57.—This clause seeks to omit section 44 of the Act relating to shifting of agents from one insurer to another insurer.

Clause 58.—This clause seeks to substitute sections 44A and 45 of the Act to provide that no policy of life insurance shall be called in question on any ground after the period of five years. It also provides that the policy can be called in question by the insurer within the period of five years only in case of fraud.

Clause 59.—This clause seeks to omit sections 47A and 48 of the Act relating to claims on small life insurance policies and directors of insurers being companies.

Clause 60.—This clause seeks to substitute section 48A of the Act to prohibit insurance agents or insurance intermediaries from becoming director in any insurance company.

Clause 61.—This clause seeks to amend section 49 of the Act relating to restriction of dividends and bonuses in order to omit certain redundant provisions.

Clause 62.—This clause seeks to substitute sections 52 and 52A of the Act in order to omit redundant provisions in the section relating to prohibition of the business on dividing principle. It further provides for appointment of an Administrator by the Authority to manage the affairs of the insurer.

Clause 63.—This clause seeks to amend section 52BB of the Act to provide for appeal to the Securities Appellate Tribunal in place of the Central Government against the order of attachment of property by the Authority.

Clause 64.—This clause seeks to substitute section 52D of the Act to provide for termination of appointment of an Administrator by the Authority in place of the Central Government.

Clause 65.—This clause seeks to amend section 52E of the Act to provide for final decision on appointment of an Administrator in place of the Central Government by the Authority.

Clause 66.—This clause seeks to amend section 52F of the Act to provide the penalty of ten thousand rupees for each day of withholding the documents of property from the Administrator appointed by the Authority during which such failure continues or ten lakh rupees, whichever is less.

Clause 67.—This clause seeks to amend section 52G of the Act to omit the words "Central Government" as a consequential change.

Clause 68.—This clause seeks to omit sections 52H to 52N (both inclusive) of the Act relating to acquisition of the undertakings of the insurers in certain cases by the Central Government, being redundant.

Clause 69.—This clause seeks to amend section 53 of the Act to provide for insertion of *explanation* defining Tribunal under the Companies Act, 1956.

Clause 70.—This clause seeks to make consequential amendments in section 58 of the Act to substitute relevant sections of the Companies Act, 1956 in place of Indian Companies Act, 1913.

Clause 71.—This clause seeks to omit section 59 of the Act relating to return of deposits as such deposits by insurers before registration are proposed to be discontinued.

Clause 72.—This clause seeks to omit sections 62 to 64 (both inclusive) of the Act relating to special provisions for external insurance companies.

Clause 73.—This clause seeks to amend the heading in Part II of the Act.

Clause 74.—This clause seeks to omit sections 64A and 64B of the Act relating to incorporation of the Insurance Association of India and entry of names of the members in the register.

Clause 75.—This clause seeks to substitute sections 64C and 64D of the Act to provide for consequential amendment to the section dealing with the Life Insurance Council and General Insurance Council.

Clause 76.—This clause seeks to substitute section 64F of the Act relating to composition, function and operational issues of the Life Insurance Council and the General Insurance Council to make them the self-regulatory organisations.

Clause 77.—This clause seeks to amend section 64G of the Act to empower the Executive Committees of Life Insurance Council and General Insurance Council to nominate members on casual vacancies by bye-laws.

Clause 78.—This clause seeks to omit section 64-I of the Act relating to holding of examination for insurance agents by the Life Insurance Council.

Clause 79.—This clause seeks to amend section 64J of the Act to enable the Life Insurance Council to collect fee by bye-laws from council members.

Clause 80.—This clause seeks to amend section 64L of the Act to enable the General Insurance Council to collect fee by bye-laws from council members.

Clause 81.—This clause seeks to amend section 64N of the Act to empower the Authority to specify the manner for holding of joint meeting of the Executive Committees of the Life and General Insurance Councils.

Clause 82.—This clause seeks to amend section 64R of the Act to empower the Life Insurance Council and the General Insurance Council to make bye-laws for elections, meetings, levy and collection of fees, etc.

Clause 83.—This clause seeks to omit sections 64S and 64T of the Act relating to transitory provisions.

Clause 84.—This clause seeks to omit sections 64U to 64UL (both inclusive) of the Act relating to Tariff Advisory Committee and control of rates in view of the de-tariffing with effect from 01-01-2007.

Clause 85.—This clause seeks to insert a new section 64ULA in the Act to provide transitory provisions for continuation of rates, terms and conditions fixed by the Tariff Advisory Committee.

Clause 86.—This clause seeks to substitute section 64UM of the Act to empower the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors.

Clause 87.—This clause seeks to substitute sections 64V and 64VA of the Act to empower the Authority to regulate valuation of the assets and procedure for calculation of solvency margin of insurers.

Clause 88.—This clause seeks to substitute section 64VC of the Act to empower the Authority to regulate opening and closing of places of business of insurers.

Clause 89.—This clause seeks to omit Part III and Part IIIA of the Act relating to provident societies, which are no longer permitted to underwrite the insurance business. It also omits the provisions relating to insurance co-operative societies.

Clause 90.—This clause seeks to omit Part IV of the Act relating to mutual insurance companies and life insurance societies, as they are not allowed to underwrite insurance business in India.

Clause 91.—This clause seeks to amend section 102 of the Act to enhance the penalty for default in complying with, or act in contravention of, the Act to one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Clause 92.—This clause seeks to substitute sections 103 and 104 of the Act to enhance the fine not exceeding twenty-five crore rupees and with imprisonment which may extend to ten years in case a person carries on business of insurance without obtaining a certificate of registration. It also enhances the penalty for contravention of provisions relating to investment of controlled fund or assets.

Clause 93.—This clause seeks to amend section 105 of the Act to enhance the penalty not exceeding one crore rupees in case any executive of the insurer wrongfully obtains or withholds the property under the Act.

Clause 94.—This clause seeks to substitute sections 105B and 105C of the Act to enhance penalty in case an insurer fails to comply with the obligations for rural or social sector or third party insurance for motor vehicles to not exceeding twenty-five crore rupees. It further provides for powers of adjudication to the Authority and provides penalty for contravention where there is no separate penalty provided in the Act.

Clause 95.—This clause seeks to amend section 106A of the Act to provide for consequential amendments.

Clause 96.—This clause seeks to omit sections 107 and 107A of the Act being redundant.

Clause 97.—This clause seeks to substitute section 109 of the Act to provide that no court shall take cognizance of any offence punishable under the Act save on a complaint made by an officer of the Authority.

Clause 98.—This clause seeks to substitute section 110 of the Act to provide for appeal to the Securities and Appellate Tribunal against the decision of the Authority and omit certain redundant provisions.

Clause 99.—This clause seeks to omit section 110E of the Act being redundant.

Clause 100.—This clause seeks to omit sections 110G and 110H of the Act relating to appeals in view of the provision for appeal to Securities Appellate Tribunal.

Clause 101.—This clause seeks to insert a new section 110A in the Act to provide for recovery of penalties imposed by the Authority as arrears of land revenue.

Clause 102.—This clause seeks to amend section 111 of the Act to omit the words "provident society".

Clause 103.—This clause seeks to substitute section 113 of the Act to omit redundant provisions relating to acquisition of surrender value of life insurance policies.

Clause 104.—This clause seeks to amend section 114 of the Act to omit and insert the provisions relating to rule making powers in respect of which substantive provisions have been made in the Act.

Clause 105.—This clause seeks to amend section 114A of the Act to omit and insert the provisions relating to regulation making powers in respect of which substantive provisions have been made in the Act.

Clause 106.—This clause seeks to omit the Fifth Schedule, Sixth Schedule and Eighth Schedule from the Act being redundant.

Clause 107.—This clause seeks to amend the General Insurance Business (Nationalisation) Act, 1972 to insert section 10A to empower the Central Government to allow public sector General Insurance companies to raise money from the market to meet their capital requirements.

Clause 108.—This clause seeks to omit section 25 from the General Insurance Business (Nationalisation) Act, 1972 relating to properties in India not to be insured with foreign insurers except with permission of Central Government as the said provision has been kept in the Insurance Act, 1938.

Clause 109.—This clause seeks to amend section 2 of the Insurance Regulatory and Development Authority Act, 1999 in order to substitute “Insurance Regulatory and Development Authority” to “Insurance Regulatory and Development Authority of India”.

Clause 110.—This clause seeks to amend section 3 of the Insurance Regulatory and Development Authority Act, 1999 consequent upon the change of the name to Insurance Regulatory and Development Authority of India.

Clause 111.—This clause seeks to omit clause (c) of sub-section (1) of section 16 of the Insurance Regulatory and Development Authority Act, 1999 relating to imposition of levy by the Authority as a percentage of premium income of the insurers for Insurance Regulatory and Development Authority Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 104 of the Bill seeks to amend section 114 of the Insurance Act, 1938 which empowers the Central Government to make rules. The matters on which rules may be made, *inter alia*, relate to the manner of inquiry under sub-section (1) of section 105C and the form in which an appeal may be preferred under sub-section (2) and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section (6) of section 110.

Clause 105 of the Bill seeks to amend section 114A of the Insurance Act, 1938 which empowers the Insurance Regulatory and Development Authority to make regulations consistent with the Act and the rules made thereunder, to carry out the purposes of the Act. The matters on which regulations may be made, *inter alia*, relate to (i) manner of making application for registration and documents under sub-section (2) of section 3; (ii) annual fee to the Authority and manner of payment under sub-section (1) of section 3A; (iii) minimum annuity and other benefits to be secured by the insurer under section 4 and equity capital and such forms of capital including hybrid capital required under sub-section (1) of section 6A; (iv) separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business under sub-section (1) and sub-section (2A) of section 10; and its waiver under the said section; (v) the manner in which an abstract of the report of the actuary to be specified; (vi) the fee for procuring a copy of return under sub-section (1) of section 20; (vii) investment of assets and further provisions regarding investments by an insurer under sections 27, 27A, 27B, 27C; and time, manner and other conditions of investment of assets under section 27D; (viii) the form in which a return giving details of investments made under section 28; (ix) the loans including the loans sanctioned to the full time employees of the insurer under clause (a) of sub-section (3) of section 29; (x) the sum to be paid by the insurer to any person under section 31B; (xi) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under sections 32B and 32C; (xii) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D; (xiii) the minimum information to be maintained by insurers or intermediary or insurance intermediary in their books and all other matters incidental thereto under sub-section (7) of section 33; (xiv) the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance business are to be prepared under clauses (b) and (c) of sub-section (3) of section 35; (xv) the manner of assessment of compensation under the proviso to sub-section (4A) of section 37A; (xvi) the fee to be charged by the insurer under sub-section (3) of section 39; (xvii) the manner of payment of benefits under sub-section (12) of section 39; (xviii) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40; (xix) the manner and form of expenses of management under section 40B; (xx) the manner and form of expenses of management under section 40C; (xxi) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42; (xxii) the code of conduct under clause (h) of sub-section (3) of section 42; (xxiii) the manner of exclusion of certain assets, the manner of valuation of liabilities and time for furnishing statement under section 64V; (xxiv) the matters specified under sub-section (1) of section 64VA relating to sufficiency of assets; (xxv) the form, time, manner including authentication of the return giving details of solvency margin under sub-section (9) of section 64VA; (xxvi) the manner of opening and closing places of business under section 64VC; (xxvii) the norms for surrender value of life insurance policy under sub-section (1) of section 113.

2. The rules made under section 114 and the regulations made under section 114A of the Insurance Act, 1938, shall have to be laid, as soon as they are made, before both Houses of Parliament.

3. The matters in respect of which rules and regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. LXXIV OF 2008

A Bill to provide for reservation of appointments or posts in civil services for members of the Scheduled Castes and the Scheduled Tribes in establishments and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Act, 2008.

Short title,
application
and
commence-
ment.

(2) It shall apply to every establishment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appointing authority", in relation to a service or post in an establishment, means the authority empowered to make appointment to such service or post;

(b) "establishment" means every establishment owned, established, controlled, managed or financed by the Government and includes—

(i) a Ministry or department or subordinate office or attached office of the Government;

(ii) a public sector undertaking or statutory authority constituted under any Central Act;

(iii) a corporation in which not less than fifty-one per cent. of the paid-up share capital is held by the Government;

(iv) a university established by a Central Act and its affiliated colleges, including medical and engineering colleges and institutions;

(v) a primary or secondary school or any other educational institution;

(vi) an industry, trade or business;

(vii) a Government company as defined under section 617 of the Companies Act, 1956; and

1 of 1956.

(viii) an autonomous body, organisation or institution receiving grant or aid from the Consolidated Fund of India;

(c) "Government" means the Central Government;

(d) "Group 'A' post" or "Group 'B' post" or "Group 'C' post" or "Group 'D' post" means a post which is classified as such by the President in exercise of the powers conferred by the proviso to article 309 of the Constitution or by or under any Act of Parliament and includes an equivalent post in any establishment;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "promotion by non-selection" means promotion made on the basis of seniority-cum-fitness;

(g) "promotion by selection" means promotion made on the basis of merit-cum-seniority;

(h) "recruitment year" means the calendar year for which the recruitment is made;

(i) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

(j) "scientific or technical post" include post for which qualifications in natural sciences or exact sciences or applied sciences or technology are essential and the incumbent of such post shall have to use his or her knowledge in such sciences for discharge of duties.

Reservation
in appoint-
ment by
direct
recruitment
and
promotion.

3. (1) The Government shall reserve such percentage of posts for members of the Scheduled Castes and the Scheduled Tribes for appointment in civil services by direct recruitment and promotion, in such manner, as may be prescribed.

(2) The vacancy reserved for members of the Scheduled Castes or the Scheduled Tribes under sub-section (1) shall be filled in such manner as may be prescribed.

No reserva-
tions in
certain cases.

4. (1) Notwithstanding anything contained in section 3, there shall be no reservation where appointments are made—

(i) for a period of less than forty-five days;

(ii) for work charged post required for any emergency relief work;

(iii) to posts higher than the lowest grade of Group 'A' posts and classified as scientific or technical post; and

(iv) to posts higher than the lowest grade of Group 'A' posts in institutions of national importance and Indian Institutes of Management specified in the Schedule.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein or, as the case may be, omitting therefrom, any institution of national importance and Indian Institutes of Management and on the publication of such notification, such institution shall be deemed to be included in or, as the case may be, omitted from, the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

5. In the case of promotion by selection from one Group 'A' post to another Group 'A' post which carries the scale of pay, the maximum of which is equal to or less than the maximum of the scale of pay of a Director in the Central Secretariat Service or equivalent posts in other establishments, the officers belonging to the Scheduled Castes and the Scheduled Tribes, who are fit to hold the post and are relatively senior so as to be within the number of vacancies for which the select list is to be drawn, shall be included in such select list and considered for appointment.

Inclusion of Scheduled Castes and Scheduled Tribes officers in select list in case of promotion within Group 'A'.

6. (1) Appointment to an unreserved vacancy shall be open to all eligible persons including a person belonging to the Scheduled Castes or the Scheduled Tribes.

Unreserved vacancies to be open to members of Scheduled Castes and Scheduled Tribes.

(2) Where such unreserved vacancy is filled by direct recruitment or promotion by a person belonging to the Scheduled Castes or the Scheduled Tribes on the basis of merit, then, such person shall be appointed against the unreserved vacancy:

Provided that no such appointment shall be made for promotion by non-selection.

7. (1) The maximum age limit fixed for direct recruitment to a service or post shall be increased by five years for members of the Scheduled Castes and the Scheduled Tribes.

Relaxation of age.

(2) The maximum age limit fixed for promotion to a post, if any, shall be increased by five years for members of the Scheduled Castes and the Scheduled Tribes:

Provided that no such relaxation shall be available where the maximum age limit for promotion has been fixed above fifty years.

8. The examination fee or application fee, determined for recruitment to a service or post through competitive examination or otherwise, may be reduced to such extent for members of the Scheduled Castes and the Scheduled Tribes, as may be prescribed.

Fee concession.

9. (1) Any standard of suitability, excluding the essential and desirable qualifications, required for appointment by direct recruitment to a post may be relaxed for members of the Scheduled Castes and the Scheduled Tribes, if sufficient number of such candidates possessing requisite standards are not available to fill the vacancies reserved for them:

Relaxation in qualifications and experience.

Provided that no such appointment shall be made where the candidate is found unfit to hold the post.

(2) The experience required for appointment by direct recruitment to a post may be relaxed for members of the Scheduled Castes and the Scheduled Tribes, if at any stage of selection, sufficient number of such candidates possessing the requisite experience are not available to fill the vacancies reserved for them.

10. (1) Where a qualifying examination is held to determine fitness of eligible persons for promotion by non-selection and sufficient number of members of the Scheduled Castes and the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards may be relaxed, consistent with the minimum standards of fitness required for appointment to the post, in the case of members of the Scheduled Castes and the Scheduled Tribes.

Reservation in case of promotion.

(2) Where qualifying examination is held to determine merit of eligible persons for promotion by selection and sufficient number of members of the Scheduled Castes and the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards may be relaxed, consistent with the minimum standards of merit required for appointment to the posts, in the case of members of the Scheduled Castes and the Scheduled Tribes.

11. The vacancies reserved for members of the Scheduled Castes or the Scheduled Tribes shall respectively be filled by members of the Scheduled Castes and the Scheduled Tribes only.

Reserved vacancies to be filled by members of Scheduled Castes and Scheduled Tribes.

Abolition of posts not to affect the representation of members of Scheduled Castes and Scheduled Tribes.

Liaison officer.

Maintenance of documents and records and furnishing of report by appointing authority.

Training programmes for Scheduled Castes and Scheduled Tribes.

Penalty for making false claim.

Penalty for issuing false caste certificate.

Disciplinary action for contravention of provisions of Act.

Power to issue directions.

Existing office memoranda to continue.

12. Where posts in an establishment are to be abolished and as a result thereof, the services of certain persons are required to be either surrendered or terminated, no such surrender or termination shall be made in respect of members of the Scheduled Castes and the Scheduled Tribes, if it results in lowering their representation in relation to the percentage of reservation fixed for them.

13. (1) Every establishment shall designate an officer of such rank, as may be prescribed, to function as a liaison officer for the purpose of ensuring that the provisions of this Act or the rules made thereunder or any direction or instruction issued by the Government regarding reservation are not contravened.

(2) The liaison officer shall, from time to time, inspect and verify the documents, records and reports with respect to appointments of members of the Scheduled Castes and the Scheduled Tribes made by the appointing authority by direct recruitment or promotion.

(3) Where the liaison officer is satisfied that any establishment has contravened the provisions of this Act or the rules made thereunder or any direction or instruction issued, he shall submit a report of such contravention to the head of the establishment.

(4) On receipt of the report of contravention under sub-section (3), the head of establishment shall take disciplinary action under section 18 against the person responsible for such contravention.

14. (1) Every appointing authority, or an officer authorised by him in this behalf, shall maintain such documents and records, and furnish every year a report on the appointments of members of the Scheduled Castes and the Scheduled Tribes made by direct recruitment and promotion, in such manner and at such time, as may be prescribed.

(2) The appointing authority or any other officer authorised by him shall make available such documents and records for inspection, furnish such information, and render such assistance, to the liaison officer, as may be necessary, to enable him to carry out his functions under this Act.

15. The Government shall, subject to the availability of finance and other resources, develop and organise training programmes to advance the competence of members of the Scheduled Castes and the Scheduled Tribes for appointment to services and posts.

16. Whoever knowingly makes a false claim that he is a member of the Scheduled Caste or the Scheduled Tribe, as the case may be, shall be liable to punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

17. Whoever knowingly issues a false Scheduled Caste or Scheduled Tribe certificate shall be liable for punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

18. Where any person responsible for implementing the provisions of this Act or the rules made thereunder, intentionally contravenes any of the provisions thereof, he shall be liable for disciplinary action under the service rules applicable to such person.

19. The Government may, for giving effect to the provisions of this Act or the rules made thereunder, issue such directions to establishments, as it deems fit.

20. All memoranda issued or purported to have been issued by the Government in relation to reservation of posts in civil services for members of the Scheduled Castes and the Scheduled Tribes, immediately before the commencement of this Act, shall, in so far as they relate to the matters for which provisions have been made in this Act and are not inconsistent

therewith, be deemed to have been issued under this Act as if this Act had been in force on the date on which such memoranda were issued.

21. (1) The Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the percentage of posts for reservation and the manner of reservation under sub-section (1) of section 3;

(b) the manner of filling vacancies under sub-section (2) of section 3;

(c) the extent of reduction in examination fee and application fee under section 8;

(d) the rank of the officer to be designated as the liaison officer under sub-section (1) of section 13;

(e) the documents and records to be maintained and the time and manner of furnishing report under sub-section (1) of section 14.

(3) Every rule made by the Government under this section shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See clause (iv) of sub-section (1) of section 4]

1. Aligarh Muslim University, Aligarh
2. All India Institute of Medical Sciences, New Delhi
3. Allahabad University, Allahabad
4. Banaras Hindu University, Varanasi
5. Delhi University, Delhi
6. Dr. B.R. Ambedkar National Institute of Technology, Jalandhar
7. Imperial War Museum
8. Indian Institute of Management, Kolkata
9. Indian Institute of Management, Lucknow
10. Indian Institute of Management, Ahmedabad
11. Indian Institute of Management, Bangalore
12. Indian Institute of Management, Indore
13. Indian Institute of Management, Kozhikode
14. Indian Institute of Technology, Chennai
15. Indian Institute of Technology, Guwahati
16. Indian Institute of Technology, Kanpur
17. Indian Institute of Technology, Kharagpur
18. Indian Institute of Technology, Mumbai
19. Indian Institute of Technology, New Delhi
20. Indian Institute of Technology, Roorkee
21. Indian Museum, Calcutta
22. Indian War Memorial, New Delhi
23. Jawaharlal Institute of Post Graduate Medical Education and Research, Pondicherry
24. Malaviya National Institute of Technology, Jaipur
25. Maulana Azad National Institute of Technology, Bhopal
26. Motilal Nehru National Institute of Technology, Allahabad
27. National Institute of Technology, Surathkal
28. National Institute of Technology, Agartala
29. National Institute of Technology, Calicut
30. National Institute of Technology, Durgapur
31. National Institute of Technology, Hamirpur
32. National Institute of Technology, Jamshedpur
33. National Institute of Technology, Kurukshetra
34. National Institute of Technology, Patna
35. National Institute of Technology, Raipur
36. National Institute of Technology, Rourkela
37. National Institute of Technology, Silchar
38. National Institute of Technology, Srinagar
39. National Institute of Technology, Tiruchirappalli
40. National Institute of Technology, Warangal
41. National Library, Calcutta
42. Post Graduate Institute of Medical Education and Research, Chandigarh
43. Rajiv Gandhi Indian Institute of Management, Shillong
44. Sardar Vallabhbhai National Institute of Technology, Surat
45. Victoria Memorial, Calcutta
46. Vishwa Bharati, West Bengal
47. Visvesvaraya National Institute of Technology, Nagpur

STATEMENT OF OBJECTS AND REASONS

At present, administrative instructions issued by the Central Government from time to time, provide reservation of appointments or posts for the Scheduled Castes and the Scheduled Tribes in civil services under the control of the Central Government. These instructions have been issued in pursuance of clauses (4) and (4A) of article 16 and the proviso to article 335 of the Constitution of India which empower the State to make provisions for reservation of appointments or posts in favour of the Scheduled Castes and the Scheduled Tribes.

2. Being sensitive to the need for providing adequate representation for the Scheduled Castes and the Scheduled Tribes in civil services under the control of Central Government and to give statutory backing to the instructions in the matter, the Government decided to enact a suitable legislation which will elevate the provisions of the reservation to a statutory right and also instil greater confidence amongst members of the Scheduled Castes and the Scheduled Tribes. It will go a long way in meeting the constitutional goal of securing justice, liberty and equality for all citizens of the country and in promoting fraternity amongst them all.

3. The Bill seeks to achieve the above objects.

PRITHVIRAJ CHAVAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill empowers the Central Government to prescribe the extent and manner of reservation by direct recruitment and promotion in civil services for the members of the Scheduled Castes and the Scheduled Tribes. Sub-clause (2) thereof empowers the Central Government to prescribe the manner of filling such vacancy.

2. Item (iv) of sub-clause (1) of clause 4 of the Bill empowers the Central Government to amend the Schedule, by notification in the Official Gazette, to include or, omit from, such Schedule any institution of national importance and Indian Institutes of Management.

3. Clause 8 of the Bill empowers the Central Government to prescribe the extent of fee concession for the members of the Scheduled Castes and the Scheduled Tribes.

4. Sub-clause (1) of clause 13 of the Bill empowers the Central Government to prescribe the rank of the officer who may be designated as the liaison officer.

5. Sub-clause (1) of clause 14 of the Bill empowers the Central Government to prescribe the manner of maintaining documents and records, and the manner and time of furnishing report on appointments of the members of the Scheduled Castes and the Scheduled Tribes made by direct recruitment and promotion, by the appointing authority.

6. The matters in respect of which rules may be made or notification may be issued are essentially matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

V.K. AGNIHOTRI,
Secretary-General.